

## BOARD ACTION MEMORANDUM

**TO:** NCUA Board

**DATE:** November 29, 2010

**FROM:** Robert M. Fenner  
Office of General Counsel

**SUBJ:** Final Rule,  
12 C.F.R. Parts 701, 708a, 708b

**ACTION REQUESTED:** Board approval to issue final amendments to 12 C.F.R. Parts 701, 708a and 708b. The final amendments: (1) create new §701.4 to address fiduciary duties of FCU directors; (2) create new subpart C of part 708a to address credit union to bank mergers; and (3) revise existing rules on charter and insurance conversions in parts 708a and 708b.

**DATE ACTION REQUESTED:** December 16, 2010.

**OTHER OFFICES CONSULTED:** All Regional Directors, Office of Examination and Insurance, Office of Capital Markets, Office of Corporate Credit Unions, Office of Small Credit Union Initiatives, Office of Consumer Protection.

**VIEWS OF OTHER OFFICES CONSULTED:** Concur.

**SUBMITTED TO INSPECTOR GENERAL FOR REVIEW:** Yes.

**BUDGET IMPACT, IF ANY:** None.

**RESPONSIBLE STAFF PERSONS:** Paul Peterson, Associate General Counsel, and Jacqueline Lussier and Elizabeth Wirick, Staff Attorneys, Office of General Counsel.

**SUMMARY:** Staff is proposing a number of changes designed to better protect credit union member rights and ownership interests. First, the new fiduciary duty rule in §701.4 requires FCU directors to carry out their duties in good faith, and have, or gain, an understanding of basic finance and accounting practices. Also, §701.4 prohibits FCUs from indemnifying officials or employees for liability associated with misconduct that is grossly negligent, reckless, or willful in connection with a decision that affects the fundamental rights of members. Next, new subpart C of Part 708a establishes procedural and substantive requirements for converting a credit union to a bank through a merger. The new requirements would apply to direct mergers as well as transactions where the credit union first converts to a mutual savings bank (MSB) and then merges with another bank without ever operating as a stand-alone MSB. Finally, the proposed amendments to Parts 708a and 708b revise existing rules to enhance the secrecy and integrity of the voting process in MSB and insurance conversions and require additional disclosures to members about the costs and effects of charter conversion.

**RECOMMENDED ACTION:** Board adopt the final rule.

**ATTACHMENTS:** Final Rule.